

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of

Performance Measurements and
Reporting Requirements for Operations
Support Systems, Interconnection, and
Operator Services and Directory
Assistance

CC DOCKET NO. 98-56
RM-9101

RECEIVED

JUN 2 - 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MOTION TO ACCEPT LATE-FILED PLEADING

The Telecommunications Resellers Association ("TRA"), through undersigned counsel, hereby requests that, for good cause shown, the Commission accept TRA's late-filed Comments in the above-captioned proceeding.

TRA experienced logistical difficulties beyond its control related to the filing of the above-referenced Comments on the afternoon of June 1, 1998. As a result, TRA was unable to deliver the Comments to the Office of the Secretary prior to the close of the Commission's official workday.

Grant of TRA's Motion by the Commission would not result in harm to any party to this proceeding since the Comments are being filed on the day immediately following the filing deadline.

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Accordingly, for good cause shown, the Telecommunications Resellers Association requests that the Commission grant TRA's Motion to Accept TRA's Comments in the above-referenced docket.

Respectfully submitted,

**TELECOMMUNICATIONS
RESELLERS ASSOCIATION**

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June 2, 1998

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COMMENTS OF THE
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SUMMARY

The Telecommunications Resellers Association), a trade association representing more than 650 entities engaged in, or providing products and services in support of, telecommunications resale, strongly supports the Commission's efforts to foster compliance by incumbent local exchange carriers with their statutory obligations to provide competing providers of local exchange service with equivalent access to operations support systems, as well as operator services and directory assistance, through development of model performance measurements and reporting requirements. TRA urges the Commission to structure these model performance measurements and reporting requirements in a manner consistent with these comments.

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**COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Rule 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits its comments on the *Notice of Proposed Rulemaking*, FCC 98-72, released in the captioned proceeding on April 17, 1998 ("*Notice*"). In the *Notice*, the Commission proposes to adopt certain "model performance measurements and reporting requirements" designed to "illuminate the performance of incumbent local exchange companies" ("LECs") in, among other things, providing equivalent access to operations support systems ("OSS"), as well as operator services and directory assistance.¹ As described in the *Notice*, such performance measurements and reporting requirements would be intended "to assist incumbents, new entrants and regulators in evaluating an incumbent's

¹ Notice, FCC 98-72 at ¶¶ 3-4.

performance in meeting its statutory obligations.”² TRA strongly supports the Commission’s efforts in this regard and offers the following comments to assist the Commission in promulgating meaningful performance measurements and reporting requirements.

I.

INTRODUCTION

A national trade association, TRA represents more than 650 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry, and to protect and further the interests of entities engaged in the resale of telecommunications services. Consistent with this mandate, TRA has actively sought to facilitate resale of local exchange service not only through legislative and regulatory activities, but by fostering commercial interaction between incumbent LECs and its resale carrier members.

Congress designated resale as one of three coequal "paths of entry into the local market," requiring incumbent LECs to offer all retail telecommunications services for resale at wholesale rates.³ As the Commission has recognized, resale is "an important entry strategy for small businesses that may lack capital to compete in the local exchange market by purchasing unbundled

² Id. at ¶ 3.

³ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499, ¶ 12 (1996), *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19738 (1996), *further recon.*, FCC 97-295 (Oct. 2, 1997), *aff'd/vacated in part sub. nom. Iowa Util. Bd v. FCC*, 120 F.3d 753 (1997), *cert. granted sub. nom AT&T Corp. v. Iowa Util. Bd* (Nov. 17, 1997), *pet. for rev. pending sub. nom.*, Southwestern Bell Tel. Co. v. FCC, Case No. 97-3389 (Sept. 5, 1997).

network elements or by building their own networks.⁴ Accordingly, the Commission committed to not only to eliminate statutory and regulatory barriers to resale, but to remove economic and operational impediments as well.⁵

Recognizing the need to provide their customers with a full range of service offerings, TRA's resale carrier members have been in the vanguard of competitive providers seeking to enter the local telecommunications market. A year ago, a third of TRA's resale carrier members reported that they were providing, or attempting to provide, competitive local exchange service, while an additional third reported plans to enter the local market within twelve months.⁶ TRA's resale carrier members are currently providing, or attempting to provide, competitive local exchange service in 44 states. The largest numbers of TRA resale carrier members are operating in local markets in the States of Florida and New York, with secondary concentrations in the States of California, Georgia, Illinois, Kentucky, Massachusetts, North Carolina, Tennessee, Texas, Virginia, Washington and

⁴ Id. at ¶ 907. While the telecommunications resale industry is a maturing market segment comprised of an eclectic mix of established, publicly-traded corporations, emerging, high-growth companies and newly-created enterprises, the "rank and file" of TRA's membership is still comprised of small to mid-sized carriers serving small to mid-sized businesses. The average TRA resale carrier member has been in business for five years, serves 10,000 customers, generates annual revenues of \$10 million and has in the neighborhood of 50 employees. More than half of TRA's resale carrier members are non-facilities-based providers, with many of the remainder being "switch-based" only for a portion of their traffic. Telecommunications Resellers Association, "1997 Reseller Membership Survey and Statistics," (October, 1997).

⁵ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶¶ 12, 16.

⁶ Telecommunications Resellers Association, "1997 Reseller Membership Survey and Statistics" at 1, 15.

Wisconsin.⁷ The majority of TRA's resale carrier members are providing local exchange service exclusively through resale, although roughly a third are making some use of unbundled network elements.⁸ More than a fifth of the local service customers served by TRA's resale carrier members are residential users.⁹

TRA's resale carrier members have encountered a host of obstacles to local service resale. Indeed, a number of the earliest market entrants have already exited the local market, having concluded that the quality of local service which they were able to provide jeopardized existing relationships with their interexchange and other customers. Not surprisingly then, in response to a recent TRA survey of its members engaged in the resale of local exchange service, respondents reported that two of the three most serious impediments to their ability to compete in the local market involved deficiencies in the service they received from incumbent LECs. Thus, survey respondents identified as the three principal factors impeding their ability to compete in the local market as:

- (i) Inadequate operations support systems;
- (ii) Inadequate service levels provided by incumbent LECs to resale providers; and
- (iii) Inadequate discounts or margins.

While the model performance measurements and reporting requirements proposed in the *Notice* will not address all of these and other roadblocks to local service competition, they do

⁷ Telecommunications Resellers Association, "Member Survey of Local Competition," pp. 2, 4 (April, 1998).

⁸ Id. at 5.

⁹ Id. at 8 - 10.

hold out the promise of remedying at least the service-related obstacles. TRA wholeheartedly agrees with the Commission's assessment that:

[N]ondiscriminatory access to the functions of operations support systems is integral to the ability of competing carriers to enter the local exchange market and compete with the incumbent LEC. To compete effectively in the local exchange market, new entrants must be able to provide service to their customers at a quality level that matches the service provided by the incumbent LEC. A competing carrier that lacks access to operations support systems equivalent to those the incumbent LEC provides to itself, its affiliates or its customers, "will be severely disadvantaged, if not precluded altogether, from fairly competing."¹⁰

The experience of TRA's resale carrier members in the local market confirms the validity of this view.

Accordingly, TRA applauds the Commission for endeavoring to develop performance measurements and reporting requirements with the intent of enhancing the visibility of the performance of incumbent LECs in satisfying their statutory duty to provide nondiscriminatory access to OSS functions, as well as operator services and directory assistance. The Commission is correct that "[m]andating nondiscriminatory access" is a far cry from "achieving it in practice."¹¹ The latter requires, as the Commission has acknowledged, "vigilant[] and vigorous[] enforce[ment],"

¹⁰ Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), CC Docket No. 97-231, FCC 98-17, ¶ 82 (released Dec. 24, 1997), *recon. pending, appeal pending sub nom. BellSouth Corporation v. FCC*, No. 98-1087 (D.C.Cir. March 6, 1998) (footnotes deleted).

¹¹ Notice, FCC 98-72 at ¶ 13.

especially "during the transition from monopoly to competition."¹² Such enforcement will certainly be rendered more effective by the availability of data measuring incumbent LEC performance.

TRA, of course, is disappointed that the Commission elected not to adopt performance standards and technical standards, or even to mandate use of its performance measurements or imposition of its reporting requirements. TRA, however, understands the importance of maintaining a cooperative working relationship between and among federal and state regulators. Realization of the Congressional objective of opening the local exchange/exchange access market to competition will require united resolve and regulatory diligence at all levels. Certainly, further jurisdictional turf wars in the appellate courts will not improve the prospects for competition in the local market. Moreover, TRA believes that most state commissions will see the merit in uniform national performance measurements and reporting requirements and will accept the Commission's guidance in this area, incorporating into their own oversight schemes the Commission's model performance measurements and reporting requirements. The Commission, however, should, as it has committed to do, be prepared to "adopt national, legally binding rules"¹³ in the event that a threshold level of uniformity is not achieved, thereby hindering the pro-competitive purposes for which the Commission is developing model performance measurements and reporting requirements.

TRA submits that the Commission's authority to adopt such "national, legally binding rules" is clear. The U.S. Court of Appeals for the Eighth Circuit affirmed the Commission's

¹² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 20.

¹³ Notice, FCC 98-72 at ¶¶ 4, 24.

authority not only to identify network elements, expressly upholding the Commission's identification of OSS as a network element that must be provided on an unbundled basis, but to define the scope of an incumbent LEC's resale obligations.¹⁴ Moreover, the Court did not disturb Sections 51.313(b) and 51.313(c) of the Commission's Rules, which provide, respectively, that "the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network access shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself," and "[a]n incumbent LEC must provide a carrier purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC support systems."¹⁵ And, the Court did not disturb Section 51.603(b) of the Commission's Rules, which requires "[a] LEC . . . [to] provide [wholesale] services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users."¹⁶ Given its acknowledged authority to define unbundled network elements and structure resale obligations, adopting performance measurements and reporting requirements to

¹⁴ Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), *modified* 1997 U.S. App. LEXIS 28652 (8th Cir. Oct. 14, 1997), *writ of mandamus issued* No. 96-3321 (8th Cir. Jan. 22, 1998), *cert. granted sub. nom AT&T Corp. v. Iowa Utilities Board*, 118 S.Ct. 879 (1998), *pet. for cert. pending*.

¹⁵ 47 C.F.R. § 51.313(b), (c).

¹⁶ 47 C.F.R. § 51.603(b).

ensure compliance with these implementing regulations is well within the bounds of the Commission's jurisdictional authority.

TRA is not as optimistic that state commissions will forge and enforce uniform performance standards or that incumbent LECs will voluntarily acquiesce to uniform technical standards for electronic OSS interfaces. With respect to the latter, the Commission has recognized that a lack of uniformity among incumbent LECs and across markets "impose[s] particular hardships for small entities that are likely to have less of a financial cushion than larger entities."¹⁷ The need to interface with multiple electronic OSS interfaces has proven to be a huge barrier to entry for small carriers with national interexchange customer bases. Indeed, such providers often face a diversity of interface technologies within the same state or region. Developing systems to communicate with multiple electronic OSS interfaces consumes precious financial and personnel resources that would be far better expended providing local service alternatives to the consuming public.

TRA is aware that various Alliance for Telecommunications Industry Solutions ("ATIS")-sponsored committees are attempting to develop uniform technical standards for electronic OSS interfaces, and that progress is being made in these endeavors. But while there may be "no record of delay on the part of these committees,"¹⁸ more than two years have passed since enactment of the Telecommunications Act of 1996 ("Telecom Act"), local resale is floundering, and TRA's small resale carrier members are still expending their limited resources attempting to cope with a multiplicity of electronic OSS interfaces. Moreover, compliance with any standards ultimately

¹⁷ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 61.

¹⁸ Notice, FCC 98-72 at ¶ 127.

developed by the ATIS-sponsored committees will be voluntary, with the decision to conform to those standards left solely to the incumbent LECs who benefit most directly from preservation of impediments to competitive entry into the local market.

While it does not disagree that the development of guidelines for electronic OSS interfaces is best left to industry committees, TRA submits that it is time for the Commission to become a more pro-active participant in this process. Certainly, the commitment extracted by the Commission from Bell Atlantic/NYNEX to implement any standards adopted by such committees within six months is a significant step in the right direction. It may be time, however, to impose strict deadlines on the industry committees, requiring them to complete their work expeditiously. Without a doubt, the Commission should not only require compliance by incumbent LECs with any standards developed by the industry committees, but should establish strict deadlines for such compliance. The six month commitment made by Bell Atlantic/NYNEX confirms the feasibility of a deadline of this duration.

TRA urges the Commission to bear in mind that delay always favors the incumbent. In the more than two years following the enactment of the Telecom Act, no Bell Operating Company ("BOC") has been able to demonstrate compliance with the basic requirements of Section 251(c). Moreover, the Commission has repeatedly cited OSS inadequacies as one of the principal deficiencies in such compliance showings.¹⁹ Accordingly, it is not surprising that incumbent LECs

¹⁹ See, e.g., Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina (Memorandum Opinion and Order), CC Docket No. 97-208, FCC 97-418, ¶¶ 82 - 181 (released Dec. 24, 1997), *appeal pending sub nom. BellSouth Corporation v. FCC*, Case No. 98-1019 (D.C. Cir. Jan. 13, 1998); Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20543, ¶¶ 128 - 221 (1997).

still exercise virtual monopoly control over the local exchange/exchange access market, often retaining market shares in excess of 99 percent.²⁰

Unlike TRA's resale carrier members, which generally lack the resources to participate in industry committees, the incumbent LECs are major participants in these forums. And unlike TRA's resale carrier members, incumbent LECs benefit from a lack of uniform technical standards for electronic OSS interfaces. TRA's resale carrier members are simply not in a position to compel incumbent LECs to take actions critical to the competitive viability of local service resale. Small carriers must rely on regulators to demand compliance by incumbent LECs with statutory requirements. TRA submits that Commission prompting may well be necessary to ensure that uniform technical standards for electronic OSS interfaces are developed any time soon.

With respect to state development of performance standards, TRA understands the Commission's reluctance to jeopardize federal/state working relationships by mandating national benchmarks. TRA further recognizes the apparent absence of adequate data to guide the development of such standards. TRA, accordingly, here urges the Commission only to proactively seek the necessary data and to assume a leadership role in forging with the various state commission performance standards which will serve as benchmarks against which to evaluate the efficacy of incumbent LEC OSS functions in facilitating the resale of local exchange service.

²⁰ See, e.g., Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina (Memorandum Opinion and Order), CC Docket No. 97-208, FCC 97-418 at ¶ 22, fn. 39 (The U.S. Department of Justice estimated that BellSouth's share of the local exchange market in its service area in South Carolina was 99.8% based on access lines, including resold access lines.).

II.

RECOMMENDATIONS

A. Balance Between Burdens and Benefits

In balancing the burdens and benefits of various performance measurements and reporting requirements, TRA urges the Commission not to limit its analysis of the associated "burdens" solely to those burdens that will be borne by incumbent LECs. Rather, the Commission should factor into its "burden" calculus the continuing adverse impacts of the failure of incumbent LECs to comply with their statutory obligations to provide competing local service providers with equivalent access to OSS functions. As the Commission has recognized, "persistent discrimination by an incumbent LEC in any of the activities for which . . . performance measurements [have been proposed] would undermine a competing carrier's prospects for success in the local market."²¹ To put it bluntly, any burden measurement or reporting obligations may impose on incumbent LECs pales in comparison to the competitive burdens incumbent LECs have foisted on competitive providers.

As noted previously, in the more two years following enactment of the Telecom Act, no BOC has been able to demonstrate to the Commission that it is providing nondiscriminatory access to OSS functions. Thus, with respect to the most recent applications for in-region, interLATA authority filed by a BOC, the Commission concluded:

²¹ Notice, FCC 98-72 at ¶ 36.

There is convincing evidence in the record that BellSouth's OSS functions for the ordering and provisioning of resale services contain significant deficiencies. . . . we find that these deficiencies are significant and prevent competing carriers' from providing service to their customers at parity with BellSouth's retail operations. . . . Moreover these significant deficiencies are occurring with a relatively small volume of orders for resale of simple POTS service. We are therefore concerned that the problems with BellSouth's EDI interface will only increase as more competing carriers enter the market, and the number and complexity of services ordered by those carriers increase.²²

The burden borne by competitive local service providers, particularly smaller carriers, as a result of this ongoing failure is obviously immense. Already at a substantial competitive disadvantage vis-a-vis the entrenched incumbent LEC, competitive providers have not only been forced to market what appears to consumers to be an inferior service, but to expend significant resources remedying problems created by the incumbent LEC. And as noted previously, these problems jeopardize not only new, but long-standing, customer relationships.

Thus, in determining the burden any measurement or reporting obligations may have on incumbent LECs, TRA urges the Commission to bear in mind the continuing competitive damage that the incumbent LECs are inflicting upon TRA's resale carrier members as they seek to enter the local exchange market. Moreover, TRA further asks the Commission to consider carefully that this competitive damage is resulting from a failure by incumbent LECs to do what they are required by statute and regulation to do.

²² Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina (Memorandum Opinion and Order), CC Docket No. 97-208, FCC 97-418 at ¶ 103 (footnotes deleted).

B. Geographic Level of Reporting

TRA submits that the exclusive factor that should be considered in determining the geographic level at which performance data should be reported is the reporting level necessary to render the reported data meaningful. While the *Notice* suggests that efforts should be undertaken in identifying reporting levels "to minimiz[e] reporting burdens on incumbent LECs,"²³ TRA respectfully disagrees. As noted above, no burden on the incumbent LECs matches the burden the incumbent LECs have imposed on competing providers. Hence, achievement of meaningful results should be the only criteria.

TRA submits that performance should be measured and the results reported on a geographically relevant, as opposed to an arbitrary, basis. The boundaries of states or local access and transport areas ("LATAs") or even metropolitan statistical areas ("MSA") may bear no relation to the manner in which the incumbent LEC delivers or structures its service, and, accordingly, may mask important differences in incumbent LEC performance. Measurements should thus be taken and reported on a market-by-market basis, defined in such a way as to illuminate the incumbent LEC's actual performance. Markets may be best defined differently for individual LECs, depending on internal operational factors. The determinative consideration in defining a market should, therefore, always be the production of meaningful results.

If, however, the Commission desires to establish uniform geographic reporting levels among incumbent LECs, TRA recommends combined use of MSAs and LATAs. The MSA should be the default measurement area, granularized, as appropriate by reference to LATAs. In other

²³Notice, FCC 98-72 at ¶ 38.

words, measurements should be taken and reported by MSA unless the MSA contains portions of multiple LATAs, in which event, the MSA should be subdivided for measurement purposes into its component LATA sectors.

Critically, whatever geographic reporting level is adopted, the appropriateness of that judgment should be periodically reviewed. To the extent a given geographic level of reporting is not producing meaningful data, further geographic disaggregation should be expeditiously introduced.

C. Scope of Reporting

TRA wholeheartedly supports the *Notice's* tentative conclusion that incumbent LECs should report separately on their performance not only with respect to their retail customers and competing carriers in the aggregate, but as to individual affiliates and individual competitors.²⁴ As the *Notice* correctly points out, performance measurements to be meaningful must permit a competing carrier to determine whether the OSS access it is receiving is comparable not only to that being provided to the incumbent LEC's retail customers, but to other competing carriers individually, as well as individual affiliates of the incumbent LEC. Requiring incumbent LECs to provide each competing carrier with data regarding its OSS performance with respect to each individual competitor in a market will avoid manipulation of average carrier results through preferred treatment of a single competitor. Such stratagems could not be detected if a carrier were to receive only aggregate data regarding competing carriers or individual carrier data with respect to itself, but not with respect to other providers.

D. Relevant Electronic Interfaces

Given their relatively small size and limited resources and the costs associated with the current multiplicity of electronic OSS interfaces, as well as the costs associated with high-end -- *i.e.*, electronic data interchange ("EDI") -- interfaces, many of TRA's resale carrier members continue to submit orders manually. This circumstance may well change if and when uniform technical electronic interface standards are developed and implemented industry wide and when all incumbent LECs offer Graphic User Interfaces ("GUI"), but for the time being manual order submission is still a way of life for small providers. Accordingly, TRA strongly disagrees with the *Notice's* tentative conclusion that incumbent LECs need only measure OSS performance with respect to electronically-provided access.²⁵ TRA submits that the fact that incumbent LECs access their own internal systems electronically for retail purposes should not be dispositive of this matter because small carriers' continued use of manual order processing generally results from the failure of incumbent LECs to provide electronic access in a manner usable for smaller providers.

With respect to electronic interfaces, TRA urges the Commission to disaggregate performance measurements and reporting requirements by type of interface and to require measurement and reporting for all types of interfaces. Because of their traffic requirements and limited financial resources, the TRA resale carrier members that access OSS electronically do so overwhelming through GUI-based interfaces. Accordingly, the performance of an incumbent LEC's EDI-based interfaces may not be revealing as to the quality of the access TRA's resale carrier members are receiving. If a competing carrier is to be able to evaluate the quality of its OSS access

and determine whether it is being afforded nondiscriminatory treatment, it must be able to compare its circumstance with others which are similarly situated. The performance of EDI-based and GUI-based interfaces, of course, should be comparable, but only performance measurements will determine whether this is indeed the case.

E. Performance Measurements

TRA generally endorses the performance measurements outlined in the *Notice*. TRA applauds the *Notice's* suggested disaggregation of data variously by subfunctions (pre-ordering), resale, unbundled network elements and network interconnection (ordering\provisioning and repair\maintenance), residential and business users (ordering\provisioning and repair\maintenance), simple and complex services (ordering\provisioning and repair\maintenance), dispatch requirements (repair and maintenance), and record type (billing).²⁶ TRA likewise supports the *Notice's* various measurement categories, as well as the measurement methodology outlined by the *Notice*. Certainly, TRA would have liked a finer level of disaggregation and additional measurement categories, but recognizes the Commission's efforts to structure workable performance measurements.

Notwithstanding its support of the performance measurements outlined in the *Notice*, TRA opposes the *Notice's* suggested use of sampling techniques. Given that the Commission has not sought a massive level of detail, full measurement would be far from overly burdensome on incumbent LECs. Moreover, sampling can be strategically manipulated to distort results.

²⁶ Id. at ¶¶ 43 - 90.

F. Reporting Procedures

TRA disagrees with the *Notice's* proposal to limit the distribution of reports on incumbent LEC access to carriers which are obtaining service or facilities from the incumbent LEC.²⁷ Materials relating to incumbent LECs compliance with statutory obligations are matters of general public interest, while the specifics of the reports are of consequence to a far larger universe than those carriers that are currently taking service from the incumbent LEC. The latter universe may encompass carriers that have been certified to provide service, but which have not commenced operations, carriers which are providing service in one market or region and contemplating expansion into other markets or regions, carriers that are planning to provide local service and are attempting to determine which markets they should enter, entities which are considering investing in the telecommunications industry, trade associations which represent competitive local exchange service providers, or even academics who are studying the telecommunications market. TRA submits that incumbent LECs could provide data without undue cost to all of these entities, each of which has a legitimate interest in the data, simply by posting the data on the Internet. While a clearinghouse such as that referenced in the *Notice* would perform a like function, it would add unnecessary levels of administration and cost.

TRA submits that any confidentiality concerns that an incumbent LEC or a competitive provider may have are outweighed by public policy considerations. Once the hurdle of disclosing measurement data to competitors has been overcome, supplemental confidentiality concerns diminish. Incumbent LEC performance of statutory obligations impacts not only the

²⁷ Id. at ¶¶ 106 - 11.

industry, but the consuming public in general. As holders for decades of the exclusive franchise to provide local exchange service, incumbent LECs should not be allowed to claim confidentiality over the performance of statutorily mandated activities designed to introduce competition. The industry and the public both have a right to the data necessary to assess incumbent LEC compliance with statutory mandates.

Monthly performance reporting by incumbent LECs is essential until meaningful local exchange competition has emerged. Undoubtedly, all reports for a given reporting period will be measurably delayed by compilation and analysis requirements. Hence, a quarterly report might apply to an incumbent LEC's activities upwards to four or five months prior to its distribution. To be useful, information must be virtually immediate. Monthly reporting, while still likely to generate outdated results in the fast paced telecommunications environment, should be timely enough to be useful to competitors and regulators. Quarterly reports will simply be stale.

G. Evaluation of Performance Measurements

TRA strongly supports the *Notice's* proposal to use statistical analyses to better evaluate an incumbent LEC's performance in providing nondiscriminatory access to OSS functions.²⁸ Statistical analysis would perform two critical functions. First, such analysis would reveal whether apparent differences in treatment of competitors and retail customers reflect actual differences in performance. Second, and perhaps more critical to TRA's resale carrier members, statistical analysis would show whether the reported performance data is meaningful.

With respect to the first function, TRA recommends that the Commission designate specific statistical methodologies for evaluating incumbent LEC performance, relying, where possible, on conventional statistical techniques. As the *Notice* points out, such techniques are widely understood and generally accepted, and hence would likely be perceived as fair by all industry segments.²⁹ Uniform use of such techniques would assist in cross-incumbent LEC evaluations.

As to the second function, TRA agrees with the *Notice* that testing statistically for differences in variability of completion intervals is essential to determine if average completion intervals are meaningful.³⁰ Average completion intervals may mask periodic or targeted intervals of unacceptable duration. In this respect, TRA agrees with the *Notice* that it would be revealing to test the equality of variances and to determine the percentage of completion intervals that exceed designated values.

Provided the underlying data is made available through performance reporting requirements, TRA would not object to the conduct of statistical tests by incumbent LECs. Small competitors will likely lack the resources to undertake such statistical analyses. Identification of specific tests and methodologies by the Commission should ensure that incumbent LEC-conducted statistical analyses are accurate. The potential for the conduct of audits by industry participants or federal/state regulators would further enhance the value of the resultant data.

²⁹ Id. at Appx. B.

³⁰ Id.

With respect to the equality of means tests, TRA also would not oppose certain safe harbors within which regulatory scrutiny would be avoided. To this end, TRA endorses AT&T's thresholds proposed by AT&T and detailed in Appendix B, ¶ 6, of the Notice.


III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association strongly supports the Commission's efforts to foster compliance by incumbent LECs with their statutory obligations to provide competing providers of local exchange service with equivalent access to operations support systems, as well as operator services and directory assistance, through development of model performance measurements and reporting requirements. TRA urges the Commission to structure these model performance measurements and reporting requirements in a manner consistent with these comments.

Respectfully submitted,

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